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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,600

06/06/2005

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F3324(C)

6380

201 7590 11/10/2008
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EXAMINER

WATTS, JENNA A

ART UNIT

PAPER NUMBER

4132

MAIL DATE

DELIVERY MODE

11/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,600	Applicant(s) BOWS ET AL.	
	Examiner JENNA A. WATTS	Art Unit 4132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20070717 and 20060112</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-18, drawn to a food product for microwave cooking.

Group II, claim 19, drawn to the method of cooking the food product in the microwave.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

3. The special technical feature common to Groups I and II is the microwaveable food product.

4. However, evidence of lack of unity between the two groups is found in U.S. Patent No. 6, 054, 698 to Mast.

5. As such, the special technical feature of the claimed invention is not found to define a contribution over the prior art. See 102 and 103 rejections below.

6. During a telephone conversation with Mr. Michael Aronson on October 23, 2008, a provisional election was made without traverse to prosecute the invention of Group 1, claims 1-18. Affirmation of this election must be made by applicant in replying to this

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Office action. Claim 19 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

8. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

9. In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the

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above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Claim Objections

10. Claims 6, 9 and 15 are objected to because of the following informalities:
11. Regarding Claim 6, it is assumed that Applicant intended this claim to read as a Markush claim. As such, it should include the phrase, “selected from a group consisting of” before the filling options are stated. See MPEP § 2173.05 (h).
12. Claim 9 incorrectly depends on Claim 6 when further limiting the package and should instead refer to Claim 8 which introduces the package comprising a flexible sheet material.
13. Regarding Claim 15, it appears that the word “yeast” is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
13. Claims 12 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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14. Regarding Claim 12, it is unclear whether the phrase “substantially all” means that all of the interior surface of the package comprises susceptor material, or just a large proportion thereof. For the purposes of examination, it will be assumed that a large proportion of the interior surface of the package comprises susceptor material.

15. Regarding Claim 15, the phrase “the cereal dough is proven” is unclear. Namely, it is unclear at what stage in the manufacturing or handling of the food product the proofing of the dough is occurring, i.e. whether it is occurring during the manufacturing of the food product or prior to heating by the consumer.

Claim Rejections - 35 USC § 102

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claims 1-9 and 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Mast (U.S. Patent No. 6, 054, 698).

18. Regarding Claim 1, Mast teaches a sealed package (Column 4, lines 40-41, Column 7, lines 60-63) that can be used to cook a frozen uncooked food product comprised of dough that expands on heating (Column 7, lines 45-46, 60-65, and Column 8, lines 11-14) in the microwave (Column 2, 20-21). Mast teaches that the cereal dough can be pizza, bread or cookie dough (Column 7, lines 46) which all inherently expand on heating due to the rising power of the yeast present in the dough.

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Mast further teaches that the sealed package remains sealed during microwave cooking and has free volume within the package (Column 8, lines 58-61, Figure 2) defined by the internal surface of the package and such that when the cereal dough expands and contacts area of said internal surface, the shape of the cooked cereal dough is defined, at least in part by said contact area. Mast teaches that the packaging is a flexible pouch or bag (Column 2, line 35, and Column 4, lines 40-41), thus when the dough bakes and rises in the microwave, its shaped will be limited, at least in part, by the contact areas of the packaging. The package further comprises microwave susceptor material in some of the contact areas to cause browning and/or crisping of the dough during microwave cooking (Column 7, lines 19-23, 36-40).

19. Regarding Claims 2, and 3, Mast teaches that one of the food products could be bread dough (Column 7, lines 45-46) which would have an upper surface completely comprising cereal dough. When the cereal dough is cooked in a flexible package, one of ordinary skill would expect that at least 60 or 80% of the upper surface of the bread would contact the internal surface of the package due to the rising and expansion of the dough during cooking. The extent of rising of the dough would thus be limited by the internal surface of the package. Furthermore, even if the dough was not of sufficient volume to contact the internal surface of the package, one could proof the dough for a longer period of time or inject gas into the dough to allow it to expand to the extent that at least 60 or 80% of the upper surface of the bread would contact the internal surface of the package during cooking.

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20. Regarding Claim 4, Mast teaches that the cereal dough product could be pizza or bread dough (Column 7, lines 45-46).

21. Regarding Claim 5 and 6, Mast teaches that in one embodiment, pizza dough is used and consists of toppings such as pizza sauce and cheese (Column 8, line 40), which can be considered a savory filling, consisting of vegetables, that is placed within the confines of the pizza dough.

22. Regarding Claim 7, in the pizza dough embodiment, the pizza sauce would consist primarily of tomatoes, which would constitute a liquid having rheological properties so that it would remain in the product after cooking since pizza/tomato sauce would not evaporate from the product. Applicant discloses in the specification that the filling may comprise a liquid, for example a sauce which could be sweet, savory, vegetable, meat or fish and if the filling is a liquid it preferably has the rheological properties so that it remains within the product after cooking. (See Page 6, lines 10-20 of Instant Application).

23. Regarding Claim 8, as discussed above, Mast teaches a food product in which the package comprises a flexible sheet material. Mast teaches that the flexible, sealed polymer bag is preferably formed from a continuous sheet of multi-layer film (Column 2, line 35, and Column 4, lines 40-41 and 52-53).

24. Regarding Claim 9, as discussed above, Mast teaches a package consisting of flexible sheet material which is wrapped around the cereal dough and sealed around its edges (Column 4, lines 52-64, Column 7, lines 60-62 and Figures 1 and 2).

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25. Regarding Claim 11, Mast teaches that a tray for supporting, heating and browning a food items to be cooked in the microwave cooking system is provided and includes a microwave susceptor material (Column 4, lines 45-49 and Figure 2). A tray is deemed to be a dish or plate since it serves the same purpose.

26. Regarding Claim 12, Mast teaches that the side wall tabs as well as the central portion of the tray which make up the microwaveable package are laminated with susceptor material (Column 7, lines and Figures 11 and 12), which is deemed to be substantially or most of the interior surface comprising susceptor material.

27. Regarding Claim 13, Mast teaches that the sealed polymer bag additionally comprises antenna material because Mast teaches that the bag is constructed from a composite film which includes a layer of microwave shield material (Column 5, lines 62-66), which minimizes the amount of microwave transmission through the upper surface of the sealed polymer bag but allows for sufficient heating of a susceptor material laminated to the tray (Column 6, lines 1-5). This shield material can be seen as antenna material because it includes isolated areas of metallization deposited on polyester film separated by non-metallized lines, which serve to spread microwave transmission more evenly within the sealed polymer bag (Column 6, lines 22-27). Applicant discloses that antenna material may comprise regions of discontinuous (isolated) metal foil laminated to a support to reflect and redirect microwaves thereby improving product heating (See Page 8, lines 6-17 of Instant Specification).

28. Regarding Claim 14 and 15, Mast teaches that the uncooked dough product can be bread dough (Column 7, line 46) which is deemed to be a roll.

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29. Regarding Claim 16, Mast teaches that the cereal dough is frozen after packaging because the uncooked dough product is sold as a frozen package (Column 7, lines 45-50), thus the dough would be considered frozen or in a frozen state after the packaging step has occurred.

Claim Rejections - 35 USC § 103

30. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

31. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

32. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

33. Claims 5, 6, 7, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mast (U.S. Patent No. 6, 054, 698) in view of Goedeken (U.S.P.A. 2003/0152667).

34. Regarding Claims 5, 6, and 7, Mast is relied upon as above in the rejection of Claim 1.

35. Regarding Claims 5, 6, and 7, in the alternative, Mast does not specifically teach a cereal dough with “fillings” that are savory or sweet, where the filling is selected from meat, vegetables, fruit and combinations thereof, or that the filling is a liquid with rheological properties so that it remains in the product after cooking.

36. Goedeken teaches that a filling is a non-dough composition that provides complementary flavor and/or textural properties to the dough product. The filling may lie on top of the dough portion of the product, or may be partially or fully enrobed in the dough portion (Page 4, Paragraph [0038]).

37. It would have been obvious to one of ordinary skill in the art at the time of the invention to consider the toppings taught by Mast as fillings taught by Goedeken that are savory or sweet and that have rheological properties such that they remain in the food after cooking. As stated by Goedeken, the fillings that are taught by Mast are of non-dough composition and provide complementary flavor and/or textural properties to

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the dough product. The tomato sauce, as part of the filling, is a liquid that would remain in the product after cooking.

38. Regarding Claims 17 and 18, Mast is relied upon as above in the rejection of Claim 1.

39. Regarding Claims 17 and 18, Mast does not specifically teach that the cereal dough is comprised of yeast and is frozen after proving, or without proving.

40. Goedeken teaches that cereal dough for microwave cooking can comprise yeast (Page 3, Paragraphs [0015] and [0026]), wherein the dough can be stored in a frozen state either as proofed dough or as unproofed dough (Page 5, Paragraph [0048]). Goedeken teaches that when yeast is used as the sole or primary leavening agent in the dough, time for proofing the dough may be required before cooking of the raw dough product to obtain the desired baked specific volume. The time required for proofing depends on the composition of the dough, and may be readily determined by the practitioner. (Page 3, Paragraph [0028]).

41. In the case of unproofed dough, Goedeken further teaches that the term "unproofed" means that the dough is provided in a state wherein it contains sufficient unactivated leavening agent so that the dough product will at least double in volume when allowed to proof, or in embodiments without an intermediate proofing step, the dough product will double in volume during baking. Thus, while the yeast may have generated some gases during mixing, a sufficient amount of the leavening agent is still

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available to be utilized to provide expansion of the dough at the indicated time (Page 2, Paragraph [0019].

42. It would have been obvious to one of ordinary skill in the art at the time of the invention for the dough product of Mast to have been either proofed or unproofed prior to freezing, as taught by Goedeken because, according to Goedeken, the practitioner would be able to determine, depending on the composition of the dough, the time required for proofing, and decide whether it would be necessary to proof the dough prior to freezing (Page 3, Paragraph [0028]). It can be implied from Goedeken that proofing or not proofing the dough before freezing would not make a difference in the final product, as the dough would rise inevitably during the heating process. In the case of the dough product taught by Mast, it is taught that the dough product will generate gases during the heating process (Column 8, lines 11-14). This generation of gases would lead to the rising, and thus proofing, of the dough during the heating process. Thus, even if the dough was not proofed prior to freezing, it would inevitably proof/rise in the microwave, creating a desirable final product.

43. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mast (U.S. Patent No. 6, 054, 698) in view of Brown (U.S. Patent No. 4, 626, 641).

44. Mast is relied upon as above in the rejection of Claim 1.

45. Mast does not teach that the package is in the form of a carton or box.

46. Brown teaches a microwaveable dough packaging system wherein the package is in the form of a carton which serves to protect the food during shipping and to crisp

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and brown the top crust of the food during its exposure to microwaves for cooking (Column 2, lines 25-30, and Column 3, lines 35-41).

47. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the microwave package of Mast into the carton taught by Brown because the carton taught by Brown serves a dual purpose, namely it protects the food during shipping and also serves as the cooking and browning mechanism during microwaveable cooking. Mast teaches that the flexible microwaveable package may be further placed in protective packaging and shipped (Column 7, lines 56-59). One of ordinary skill in the art would have been motivated economically to use a carton rather than a flexible package in order to prevent the use of the additional protective packaging taught by Mast. Brown further teaches that the paperboard carton is able to be recycled and is biodegradable (Column 4, lines 5-12), both of which are of significance to consumers.

48. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mast (U.S. Patent No. 6, 054, 698) in view of Fazorayer et al (Application No. JP2215337 A).

49. Mast is relied upon as above in the rejection of Claim 1.

50. Alternatively, Mast may not specifically teach that substantially all of said interior surface of the package comprises susceptor material.

51. Fazorayer et al. teaches a microwavable dough product wherein the top, sides and bottom of the soft and expandable plastic film package can comprise microwaveable susceptor material (Page 238, Column 1, lines 38-39, Column 2, lines

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21-23, Page 240, Column 1, line 26 and Column 2, lines 2-5 and Page 242, Column 2, lines 2-3).

52. It would have been obvious to one of ordinary skill in the art at the time of the invention to include some amount of microwave susceptor material both on the top and bottom portions of the package in order for the bread or pizza dough taught by Mast to be evenly browned on its top and bottom surfaces. One of ordinary skill in the art would have been motivated to add some amount of microwave susceptor material to increase the appeal of microwaveable dough products to consumers by advertising that both the top and bottom of the dough product would be sufficiently browned and crisp.

53. Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mast (U.S. Patent No. 6, 054, 698) in view of Paulucci (U.S. Patent No. 6, 168, 812).

54. Regarding Claims 15 and 17, Mast is relied upon as above in the rejection of Claim 1.

55. Regarding Claims 15 and 17, in the alternative, Mast may not specifically teach that the cereal dough comprises yeast and the cereal dough is proven, and that the dough is frozen after proofing.

56. Regarding Claims 15 and 17, Paulucci teaches a frozen microwaveable pizza and packaging (Column 8, lines 30-31) wherein the pizza dough is comprised of active dry yeast (Column 3, line 43). Paulucci further teaches that after mixing of the ingredients, the dough is discharged onto an incline conveyor belt and conveyed slowly

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for 45 minutes to 1 hour. This “resting” or “proofing” stage allows the yeast in the dough to activate and causes the dough to rise (Column 4, lines 7-11). Finally, the pizza products are spaced apart on a conveyor and baked or partially baked before being frozen (Column 7, 15-17).

57. It would have been obvious to one skilled in the art at the time of the rejection to have added yeast and proof and then freeze the dough as taught by Paulucci in order to first allow the dough product of Mast to sufficiently expand and cook, and then to ensure that the yeast was properly activated and that the dough would rise properly in the microwave during cooking. This would ensure a uniform end product.

Examiner's Comment

58. A complete translation of Japanese document Application No. JP2215337 A has been ordered from Translations Branch.

Conclusion

59. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNA A. WATTS whose telephone number is (571)270-7368. The examiner can normally be reached on Monday through Thursday from 9am to 5pm.

60. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Lavilla, can be reached on (571) 272-1539. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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61. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/JENNA A. WATTS/

/Alicia Chevalier/

Examiner, Art Unit 4132

Primary Examiner, Art Unit 1794

November 6, 2008